

H. B. 2716

(By Delegates Diserio, Walker, Ferro, Skinner, Barill, Swartzmiller, Nelson, E., Ellem, Storch, Marcum and White)

[Introduced February 25, 2013; referred to the Committee on the Judiciary then Finance.]

A BILL to amend and reenact §5-22-1 of the Code of West Virginia, 1931, as amended, relating to the West Virginia Fairness in Competitive Bidding Act, specifically, to lower the threshold amount, from \$500,000 to \$100,000, for triggering a low bidder's duty to submit list of subcontractors on government contracts.

Be it enacted by the Legislature of West Virginia:

That §5-22-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 22. GOVERNMENT CONSTRUCTION CONTRACTS.

§5-22-1. Bidding required; government construction contracts to go to lowest qualified bidder; procedures to be followed in awarding government construction projects; penalties for violation of procedures and requirements debarment; exceptions.

(a) This section and the requirements ~~set forth~~ in this section may be referred to as the West Virginia Fairness In

1 Competitive Bidding Act.

2 (b) As used in this section:

3 (1) "Lowest qualified responsible bidder" means the bidder
4 that bids the lowest price and that meets, as a minimum, all the
5 following requirements in connection with the bidder's response to
6 the bid solicitation. The bidder must certify that it:

7 (A) Is ready, able and willing to timely furnish the labor and
8 materials required to complete the contract;

9 (B) Is in compliance with all applicable laws of the State of
10 West Virginia; and

11 (C) Has supplied a valid bid bond or other surety authorized
12 or approved by the contracting public entity.

13 (2) "The state and its subdivisions" means the State of West
14 Virginia, every political subdivision thereof, every administrative
15 entity that includes such a subdivision, all municipalities and all
16 county boards of education.

17 (c) The state and its subdivisions shall, except as provided
18 in this section, solicit competitive bids for every construction
19 project exceeding \$25,000 in total cost. ~~Provided, That~~ A vendor
20 who has been debarred pursuant to the provisions of sections
21 thirty-three-a through thirty-three-f, inclusive, article three,
22 chapter five-a of this code may not bid on or be awarded a contract
23 under this section. All bids submitted pursuant to this chapter
24 shall include a valid bid bond or other surety as approved by the

1 State of West Virginia or its subdivisions.

2 (d) Following the solicitation of bids, the construction
3 contract shall be awarded to the lowest qualified responsible
4 bidder who shall furnish a sufficient performance and payment bond.
5 The state and its subdivisions may reject all bids and solicit new
6 bids on the project.

7 (e) The apparent low bidder on a contract for the
8 construction, alteration, decoration, painting or improvement of a
9 new or existing building or structure ~~with the Department of~~
10 ~~Administration, Division of Purchasing,~~ valued at more than
11 ~~\$500,000.00~~ \$100,000 shall submit a list of all subcontractors who
12 will perform more than \$25,000 of work on the project including
13 labor and materials. ~~Provided, That this section shall not apply~~
14 ~~to any other construction projects, such as~~ This section does not
15 apply to other construction projects such as highway, mine
16 reclamation, water or sewer projects. The list shall include the
17 names of the bidders and the license numbers as required by article
18 eleven, chapter twenty-one of this code. This information shall be
19 provided to the ~~Division of Purchasing~~ contracting public entity
20 within one business day of the opening of bids for review prior to
21 the awarding of a construction contract. If no subcontractors are
22 to be used to complete the project, it will be ~~so~~ noted on the
23 subcontractor list. Failure to submit the subcontractor list
24 within one business day after the deadline for submitting bids

1 shall result in disqualification of the bid.

2 (f) Written approval must be obtained from the ~~Division of~~
3 ~~Purchasing~~ contracting public entity before any subcontractor
4 substitution is permitted. Substitutions are not permitted unless:

5 (1) The subcontractor listed in the original bid has filed for
6 bankruptcy;

7 (2) The ~~Division of Purchasing~~ contracting public entity
8 refuses to approve a subcontractor in the original bid because the
9 subcontractor is under a debarment pursuant to section
10 thirty-three-d, article three, chapter five-a of this code or a
11 suspension under section thirty-two, article three, chapter five-a
12 of this code; or

13 (3) The contractor certifies in writing that the subcontractor
14 listed in the original bill fails, is unable or refuses to perform
15 his subcontract.

16 ~~(g) The amendments to this section made during the 2012~~
17 ~~regular session of the Legislature shall expire one year from the~~
18 ~~effective date of the amendments absent further action of the~~
19 ~~Legislature.~~

20 ~~(h)~~ (g) The contracting public entity may not award the
21 contract to a bidder which fails to meet the minimum requirements
22 set out in this section. As to ~~any~~ a prospective low bidder which
23 the contracting public entity determines not to have met ~~any~~ one or
24 more of the requirements of this section or other requirements as

1 determined by the public entity in the written bid solicitation,
2 prior to the time a contract award is made, the contracting public
3 entity shall document in writing and in reasonable detail the basis
4 for the determination and shall place the writing in the bid file.
5 After the award of a bid under this section, the bid file of the
6 contracting public agency and all bids submitted in response to the
7 bid solicitation shall be open and available for public inspection.

8 ~~(i)~~ (h) ~~Any~~ A public official or other person who individually
9 or together with others knowingly makes an award of a contract
10 under this section in violation of the procedures and requirements
11 of this section is subject to the penalties set forth in section
12 twenty-nine, article three, chapter five-a of the Code of West
13 Virginia.

14 ~~(j)~~ (i) No officer or employee of this state or of ~~any~~ a
15 public agency, public authority, public corporation or other public
16 entity and no person acting or purporting to act on behalf of ~~such~~
17 an officer or employee or public entity shall require that ~~any~~ a
18 performance bond, payment bond or surety bond required or permitted
19 by this section be obtained from ~~any~~ a particular surety company,
20 agent, broker or producer.

21 ~~(k)~~ (j) All bids shall be open in accordance with the
22 provisions of section two of this article except design-build
23 projects which are governed by article twenty-two-a of this chapter
24 and are exempt from these provisions.

1 (1) Nothing in this section ~~shall apply~~ applies to:

2 (1) Work performed on construction or repair projects by
3 regular full-time employees of the state or its subdivisions;

4 (2) Prevent students enrolled in vocational educational
5 schools from being utilized in construction or repair projects when
6 the use is a part of the student's training program;

7 (3) Emergency repairs to building components and systems. For
8 the purpose of this subdivision, the term emergency repairs means
9 repairs that if not made immediately will seriously impair the use
10 of building components and systems or cause danger to ~~those~~ persons
11 using the building components and systems; and

12 (4) ~~Any~~ A situation where the state or ~~a subdivision thereof~~
13 subdivision reaches an agreement with volunteers or a volunteer
14 group ~~whereby~~ in which the governmental body will provide
15 construction or repair materials, architectural, engineering,
16 technical or ~~any~~ other professional services and the volunteers
17 will provide the necessary labor without charge to, or liability
18 upon, the governmental body.

NOTE: The purpose of this bill is to lower the threshold amount, from \$500,000 to \$100,000, for triggering a low bidder's duty to submit list of subcontractors on government contracts.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.